JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

San Juan Arias, Individually & As Next Friend of RJA, his minor daughter

(b) County of Residence of First Listed Plaintiff Wilson County, TX
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Robert E. Ammons & Sydney Meriwether, The Ammons Law Firm
3700 Montrose Blvd, Houston, TX 77006
713-523-1606

DEFENDANTS

Evenflo Company, Inc.

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☒ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☒ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
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CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
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- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
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- ☐ 625 Drug Related Seizure of Property 21 USC 881
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LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
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- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

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- ☐ 862 Black Lung (923)
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- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
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- ☐ 896 Arbitration
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V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. Section 1332

Brief description of cause:
Products liability case involving Evenflo

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

SAN JUAN ARIAS, Individually and As Next Friend of RJA, his minor daughter,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	CIVIL ACTION NO. ____________
	§	
EVENFLO COMPANY, INC.,	§	
	§	
Defendant.	§	

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

COMES NOW, San Juan Arias, Individually and As Next Friend of RJA, his minor daughter ("Plaintiffs"), complaining of Evenflo Company, Inc. ("Defendant"), and for their causes of action would respectfully show the following:

I. PARTIES

1. Plaintiff San Juan Arias is a resident of Wilson County, Texas.

2. Minor Plaintiff RJA is a resident of Wilson County, Texas.

3. Defendant Evenflo Company, Inc. is a Delaware corporation doing business in Texas and may be served with summons through its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

II. JURISDICTION AND VENUE

4. This is a product liability and negligence cause of action arising out of a vehicular accident that occurred in the Southern District of Texas.

5. The Defendant has its principal places of business in a state other than Texas. Jurisdiction, therefore, attaches pursuant to 28 U.S.C. §1332 since there is diversity of parties and the amount in controversy exceeds seventy-five thousand dollars ($75,000.00).

III.
FACTS AND GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

6. On or about April 26, 2013, a 2012 Dodge Journey, VIN 3C4P DCBG9CT187020 ("the Journey"), was being operated in Fayette County, Texas, when at the intersection of US 77 and IH 10, the Journey was struck in the passenger side by another vehicle.

7. At the time of the collision, minor RJA was a properly restrained left rear seat passenger in the Journey who weighed less than 40 pounds.

8. During the accident, and although RJA was of a proper height and weight to utilize the "Big Kid Sport" booster safety seat (hereafter also "the Big Kid in question") in accordance with Evenflo's labeling, and was properly belted into the Journey, deficiencies in the Big Kid in question resulted in catastrophic injuries that have rendered the child a ventilator-dependent quadriplegic.

IV.
GENERAL ALLEGATIONS AGAINST EVENFLO COMPANY, INC.

9. On April 19, 1991, Evenflo Company, Inc. ("Evenflo"), the manufacturer of the Big Kid in question, affirmatively and officially stated to the National Highway Transportation Safety Administration ("NHTSA") that its child seats were "restraint systems" and that the intended purpose of such products is to "restrain children or more precisely to prevent the child from striking the interior surfaces of the automobile."

10. On April 19, 1991, Evenflo affirmatively and expressly stated to NHTSA in a letter

regarding the federal regulation of child seats that it is "unfair to create the impression that such devices provide safety." In this letter, Evenflo also stated that to suggest safety seats actually provide "safety" would be a "blatant misrepresentation" and would "seriously mislead consumers."

11. Evenflo calls the "Big Kid" a "booster seat" and a "child restraint system." In the Big Kid manual, Evenflo told Plaintiff that the Big Kid was "the best way to minimize injuries to your child," that using the seat would "make a big difference" and that it would "greatly reduce the risk of serious injury to your child" in a crash.

12. For nearly 45 years prior to April 26, 2013, Evenflo has known that lateral accidents are very dangerous to children and that limiting head excursion in all directions is the most important measure of injury protection provided by a child restraint.

13. For nearly 25 years prior to April 26, 2013, Evenflo has been fully aware that various governmental and non-governmental safety organizations in North America with significant expertise in child transportation safety issues have consistently recommended against using booster seats for children who weighed less than 40 pounds and, further, identified the dangers and risks of using these products. Some of the information and recommendations that were available and actually known to Evenflo included those addressed in the following paragraphs.

14. In 1989, the American Academy of Pediatrics issued "1989 AAP Car Safety Guidelines." The guidelines recommended keeping a child in a convertible seat "for as long as possible" and that booster seats should only be used for children 40 pounds and over.

15. In January of 1989, NHTSA published a "Consumer Information" brochure. The

brochure contained a "size and weight guide for child safety seats" that stated a convertible or toddler seat is to be used until "four years or 40 pounds" is reached and that caregivers should "keep children in convertible or toddler seats as long as they will fit."

16. By no later than April 1, 1989, booster seats that Evenflo sold in Canada contained labeling and instructions that provided warnings such as this: "This booster cushion is designed for use ONLY by children who weigh between 40 and 100 pounds" and that the failure to follow this warning "can result in your child striking the vehicle's interior during a sudden stop or crash, potentially resulting in serious injury or death."

17. The Spring 1989 Safe Ride News newsletter published by the American Academy of Pediatrics contained a section entitled "What do parents need to know about booster seats?" The section noted that "safety advocates generally recommend booster seats only for children who have outgrown conventional child safety seats at about four years or forty pounds, although boosters are labeled for use by smaller children."

18. On July 17, 1989, Evenflo engineer Richard Glover sent a memo to Evenflo employee Roger Harris referencing a "recommendation" by Evenflo's Director of Product Development (Jerry Koziatek) that "we go to a recommendation of 'no less than 40 pounds for booster seats.'"

19. The Fall 1989 Safe Ride News contained an insert entitled "Common Questions about Child Safety Seats." In answer to the question, "When should my child begin using a booster seat," it stated that a booster seat should only be used when a child has outgrown a convertible seat, i.e., at around 40-43 pounds. It warned that "a booster seat provides less protection than a full-size CSS due to the lack of side wings and shoulder harness, which protect

the upper body and head."

20. The AAP's 1990 Family Shopping Guide to Car Seats stated that booster seats are to be used for children weighing 40 pounds and above. The stated disadvantage of booster seats was that they "Give much less protection than convertible seats for children under 40 pounds." It further stated: "Use boosters **only** after children outgrow their convertible seats, at about 40 pounds (even though most boosters are labeled for use by smaller children)." (Emphasis in original).

21. In 1990, the AAP issued its "1990 AAP Care Safety Guidelines." The AAP recommended keeping a child in a convertible seat "for as long as possible" and that booster seats should only be used for children weighing 40 pounds and over.

22. Also in 1990, the DOT and NHTSA issued their "Shopping Guide For Child and Infant Safety Seats." The government recommended keeping a child in a convertible seat "as long as they will fit" and that booster seats should only be used for children weighing 40 pounds and over. These same recommendations and warnings were provided again by NHTSA in a May 1990 "Buckle-Up America" campaign brochure.

23. In the 1991 "Family Shopping Guide to Car Seats" published by the AAP, the AAP recommended that parents use a convertible seat until the child reaches about 40 pounds and that booster seats are "for children who have outgrown convertible seats."

24. In 1991, DOT and NHTSA published their Child Passenger Safety Resource Manual. The Manual teaches that "Safety experts recommend that children under 40 lbs. should be kept in a convertible seat that provides superior upper body protection," even though "many manufacturers suggest using these seats at a lower weight...." The Manual further observed that it

was "misuse" to use a booster seat with a child under 40 pounds.

25. On February 22, 1991, the NTSB sent a letter to NHTSA which stated that "researchers and safety advocates agree that a convertible or toddler safety seat provides the most protection for a child between 20 and 40 pounds" and that "the Safety Board advocates the use of a convertible or toddler safety seat until the child outgrows it."

26. On June 24, 1991, following the recommendations of its safety seat engineer Koziatek, Evenflo prepared an engineering change request that modified the minimum weight on all of its booster seats from 30 to 40 pounds. This request was changed to an engineering change notice on August 21, 1991, was signed off on by the Evenflo management, and was implemented. Thereafter, when consumers contacted Evenflo regarding accidents in which their under 40 pound children were using booster seats, Evenflo would advise the consumer to use convertible seats until the children reached 40 pounds.

27. In July of 1991, NHTSA published the "Sudden Impact" brochure. In the section discussing the selection of the "right" seat for a child, it states that "toddler convertible" seats are to be used until 40 pounds and that "booster" seats are for children "over four years and 40 pounds." It also states that "Safety booster seats are intended for older children who have outgrown the toddler or convertible seat and who weigh 40-60 lbs. It is important that children smaller than 40 lbs. or 40 inches remain in a convertible seat. The convertible seat provides better protection for small children than does a booster seat."

28. In March of 1992, NHTSA published its next version of the "Child Passenger Safety Resource Manual." Numerous comments were made in the Manual regarding the proper use of booster seats, including the statement that "booster seats are intended to be used as a

transition to safety belts by older children who have outgrown convertible seats" and that "parents should be advised to keep their children in a convertible seat as long as they will fit, usually to about 40 lbs. ...." The Manual also stated that using a booster seat with a child under 40 pounds is "misuse."

29. In November of 1992, NHTSA circulated a "tip sheets" flyer to various members of the child safety seat industry for comment, including Evenflo. The flyer's tips, which included the following, were circulated to numerous Evenflo employees by its chief child safety seat engineer, Richard Glover, who stated that the tips were "commendable" and would "help" the "consumer:" (1) "Booster seats are for children over about 40 pounds; (2) Keep your child in a safety seat with a harness for as long as possible, up to about 40 pounds and four years; and (3) a toddler over one year of age, weight 20 to 40 pounds, is not big enough for a booster seat in the car. He needs the extra protection for his upper body and head that a harness with hip and shoulder straps can give."

30. On February 24, 1993, Richard Glover advised numerous Evenflo managers of steps he and others had taken to "reduce product liability exposure." One such step was that "we have increased the weight limit minimum of booster seats forcing more children to remain in toddler seats which contain shoulder belts.

31. In 1994, Evenflo introduced the "Sidekick" booster seat in the United States. Used without the shield, it instructed that the minimum safe weight for the seat was 50 pounds. Evenflo warned that use of the Sidekick without a shield for children weighing less than 50 pounds "can result in your child striking the vehicle's interior during a sudden stop or crash" and that "serious injury or death can result."

32. In September of 1995, NHTSA again published its child passenger safety tips. Those tips again included that: Booster seats are for children over about 40 pounds; a toddler over one year of age, weight 20 to 40 pounds, is not big enough for a booster seat in the car and needs the extra protection for upper body and head that a harness with hip and shoulder straps can give; and keep your child in a safety seat with a harness for as long as possible, up to about 40 pounds and four years.

33. In November of 1995, revised child passenger safety tips published by NHTSA included: "Booster seats are for children over about 40 pounds." (Tip #1)

34. In November of 1995, revised child passenger safety tips published by NHTSA included: "A toddler over one year of age, weight 20 to 40 pounds, is not big enough for a booster seat in the car. He needs the extra protection for his upper body and head that a harness with hip and shoulder straps can give." (Tip #4)

35. In November of 1995, revised child passenger safety tips published by NHTSA included: "Keep your child in a safety seat with a harness for as long as possible, up to about 40 pounds and four years." (Tip #4, pg.2)

36. In 1995 and 1996, Evenflo continued to sell the "Sidekick" booster seat in the United States. Used without the shield, it warned that the minimum safe weight for the seat was either 40 or 50 pounds. Evenflo warned that use of the Sidekick without a shield for children weighing less than 40-50 pounds "can result in your child striking the vehicle's interior during a sudden stop or crash" and that "serious injury or death can result."

37. In May of 1996, The AAP published a Policy Statement in Pediatrics, Volume 97, Number 5: "A convertible safety seat should be used as long as the child fits well (e.g., ears

below the top of the back of the seat and shoulders below the seat strap slots)." It also noted that "a booster seat should be used when the child has outgrown a convertible safety seat but is too small to fit properly in a vehicle safety belt." Recommending the use of belt-positioning boosters for children under 40 pounds was limited to those children who were "very tall."

38. On August 19, 1996, SafetyBeltSafe published a paper entitled "How To Choose Appropriate Restraints and Use Them Correctly." The paper stated that booster seats should be used for children who have "outgrown regular safety seats" and that booster seats are "not recommended for best protection of children under 40 lbs., although many models are marketed for children who weigh 30 lbs. or more."

39. In the Fall 1996 edition of Safe Ride News, the authors stated: "Do not push your child out of a safety seat too soon. A restraint with two shoulder straps and a shell is generally more protective than a booster seat...." It states that a child should use a convertible or toddler seat as long as it fits, which means until the upper weight limit is reached, usually 40 pounds, shoulders are above the strap slots, and ears are above the back of the restraint. The "Fact Sheet" discusses various types of booster seats "for children over 40 pounds."

40. In 1997, Evenflo was still selling the Sidekick in the United States; by now, it had dropped the minimum weight without the shield to 40 pounds; use with children below that weight, warned Evenflo, could result in "serious injury or death." It also introduced a new seat for the U.S. market in 1997, the Evenflo "Booster Seat" (later called the "RightFit") which also instructed that the minimum safe weight for a child using the seat was 40 pounds. The RightFit instructions specifically warned that using the booster with children who weighed less than 40 pounds "can result in your child striking the vehicle's interior during a sudden stop or crash" and

that "serious injury or death can result."

41. In August of 1997, the American College of Emergency Physicians warned that "it is best to keep kids in the forward facing car seat for as long as they fit comfortably in it."

42. In 1998, "The Ins and Outs of Safe Travel" was published by the Automotive Safety For Children Program at Riley Hospital Indiana University School of Medicine. The "Which Seat Does My Child Need?" section stated that convertible seats are for children up to 40 pounds and that "boosters are designed for children over 40 pounds who have outgrown convertible car seats."

43. In July of 1998, NHTSA issued "A Parent's Guide To Booster Seats" in which it warned that "for maximum protection, keep a child in a forward-facing child safety seat with full harness as long as the child fits in this seat."

44. In February of 1998, the Standardized Child Passenger Safety Training Program instructor's manual issued by the National Safety Belt Coalition, the DOT and NHTSA warned and taught that "A booster seat is used as a transition to safety belts by older children who have clearly outgrown the convertible safety seat."

45. In February of 1998, the Standardized Child Passenger Safety Training Program instructor's manual issued by the National Safety Belt Coalition, the DOT and NHTSA warned and taught that "While (BPBs) are labeled for use by children between 30-40 to 60-80 pounds, 'best practice' recommends that a child stay in a forward-facing seat with a full harness until at least the top weight limit of the forward facing seat at about 40 pounds."

46. In June of 1998, "The Perfect Gift" brochure was published by SafetyBeltSafe. Under "for older children (children who have outgrown safety seats with a harness)," it shows a

belt-positioning booster. It warns when discussing booster seats — including Evenflo's RightFit—"safety seat with harness preferred for under 40 lbs."

47. The revised child passenger safety tips published in December of 1998 by NHTSA included: "Auto booster seats are for children who have outgrown safety seats, at about 40 pounds." (Tip #1)

48. The revised child passenger safety tips published In December of 1998 by NHTSA included: "A full harness (convertible seat) should be used to about 40 lbs. (and) keep your child up to 40 pounds in a safety seat with a harness." (Tip #4)

49. The revised child passenger safety tips published in December of 1998 by NHTSA included as Tip 5 several recommendations stating that children should stay in convertible or toddler safety seats until they are at least 40 pounds.

50. On September 27, 1999, the Child Passenger Safety Inspection Form for use by Certified Child Passenger Safety experts (published by the International Center for Injury Prevention) stated under "booster seats" that "a child should weigh more than 40 lbs. before graduating into a booster seat."

51. In September, 1999, Evenflo was sued in a case involving a "SightSeer" booster seat entitled *Steele v. Evenflo*. The claims in the *Steele* case were centered on booster seat use by children who weighed less than 40 pounds and how such use could result in spinal cord injuries; injuries that could be avoided in a seat with integrated harnesses.

52. In January, 2000, General Motors and SafeKids published their recommendations that "kids between 40 and about 60/80 pounds (usually 4 to 8 years old) should be in booster seats."

53. On January 16, 2000, SafetyBeltSafe published its "Technical Encyclopedia for Child Passenger Safety." Under "boosters," SBS warned that "Ideally, children should use a CRS with a harness until they are too tall or too heavy (over 40 lbs.) to fit."

54. In February of 2000, NHTSA published its "Standardized Child Passenger Safety Training Program" course book. The book defined a "best practice" as "recommendations that provide the safest way to travel for child of certain age, size and physical tolerance."

55. In the 2000 "Standardized Child Passenger Safety Training Program" course book, NHTSA stated that children should "use seat with full internal harness until they reach the manufacturer's recommendation for upper size limits."

56. Among the "best practices" included in the "Standardized Child Passenger Safety Training Program" course book was: **"Best practice recommendation is for child to ride in a forward facing CRS with full harness until 40 lbs."** because such seats provide "better upper body protection." (emphasis in original).

57. Among the "best practices" included in the "Standardized Child Passenger Safety Training Program" course book was: **"Best practice recommends that a child stay in a forward facing seat with a full harness until the top weight or height limit of the forward facing seat."** (emphasis in original).

58. Among the "best practices" included in the "Standardized Child Passenger Safety Training Program" course book was: "'Best practice' recommendation is for children to use seat with full internal harness until they reach the manufacturer's recommendation for upper size limits."

59. In March of 2000, CHOP issued a Partners For Child Passenger Safety report.

"According to best practice, children who have outgrown their car seats (usually around age 4 and 40 pounds) should move into belt-positioning boosters...." In the conclusion, the report states that "restraining children according to best practice is crucial to preventing head, brain and other devastating injuries."

60. In June of 2000, the Leonard Davis Institute published an "Issue Brief" authored by the principals from CHOP which stated that "According to current guidelines, children should continue to ride in a forward-facing car seat until they reach 40 pounds."

61. In June of 2000, an article entitled "The Danger of Premature Graduation to Seat Belts for Young Children" published in the peer-reviewed journal "Pediatrics" by AAP stated: "To reduce the risk of injury, children should remain in CSS until they are at least 4 years old and weigh 40 pounds, at which point children should be placed in belt-positioning booster seats."

62. In June of 2000, NHTSA published "A Parent's Guide To Booster Seats." In this guide, NHTSA warned that children should not be moved into booster seats until they have "outgrown a convertible seat" and that "for maximum protection, keep a child in a forward-facing child safety seat with full harness as long as the child fits in the seat." It further stated that "Proper Child Safety Seat Use" prohibited belt-positioning boosters until a child was "over 40 lbs." These recommendations and warnings appeared again, a month later, in NHTSA's "Boost 'Em Before You Buckle 'Em" brochure.

63. On July 6, 2000, "Does My Child Need A Booster Seat" was published by SafetyBeltSafe, and it stated: "Children should ride in safety seats with a complete harness system as long as possible."

64. In October of 2000, the HSRC at the University of North Carolina issued the

following recommendations: "A restraint with a full harness provides the best protection for a child...Best practice is provided by keeping a child in a front-facing full harness type seat until 40 pounds or when the ears reach the top of the child restraint. For these reasons, a major best practice recommendation is to use a full harness restraint until the child outgrows it (at the upper weight OR height limit) and then switch the child to a belt-positioning booster seat or a child restraint system that can be used with a harness over 40 pounds until they are really big enough for the seat belt.

65. In December of 2000, a peer-reviewed journal article entitled "Misuse of Booster Seats" appeared in "Injury Prevention" and reported on a significant study of booster seats conducted jointly by State Farm and CHOP.

66. Findings in "Misuse of Booster Seats" included that using a belt-positioning booster with children weighing less than 40 pounds is "misuse" and that "the majority of children in this study were less than 40 lbs. In this weight range, a convertible child restraint system provides better protection than a booster seat. Booster seat use should be initiated once the child has completely outgrown their convertible child restraint system."

67. The study in "Misuse of Booster Seats" also concluded that: "in this study, over half of the children using booster seats weighed less than 40 lbs. However, better restraint alternatives exist for children in this weight range, such as a convertible restraint system. Most convertible child restraint systems are certified for children up to 40 lbs., and, as a result, children weighing 40 lbs. or less should remain in this restraint system until they reach the maximum height/weight limits.... Currently, at child safety seat clinics, if parents are following manufacturers' recommendations with use of the booster but are not following best practice

(...using a booster instead of a child restraint system for children under 40 lbs.), education is provided and an alternative seat is suggested.... Findings from this study have implications for child restraint manufacturers.... (The) instruction manuals should be updated to match current best practice guidelines.... Best practice, the use of belt positioning boosters for children over 40 lbs., should be emphasized."

68. In February of 2001, Evenflo issued its "Safe Passage" brochure in which it expressly admitted that "Booster Child Restraints are specifically designed for children who have outgrown their convertible child restraints" and further stated that it had made it its business to "put child safety first" and that "substantial funds are also allocated to consumer education on the importance and proper use of child car restraints. *So, when you want peace of mind, turn to the leaders. Turn to Evenflo.*" (Emphasis in original).

69. In April 2001, CHOP's Partners For Child Passenger Safety issued recommendations that "Current safety recommendation from the AAP and The NHTSA" is that "children should ride in a car seat with a full harness until the seat is completely outgrown based on manufacturer height and weight limits."

70. On April 23, 2001, the Association for the Advancement of Automotive Medicine published a paper entitled "Booster Seats for Children" that contained "scientifically based recommendations." Specific recommendations were made that "based on current knowledge, the most effective progression of occupant restraint is...forward facing child restraints up to 40 pounds or more depending on the product limit."

71. In July of 2001, the NHTSA published its "Child Passenger Safety Tech Report" in which it reaffirmed that "Best practice for children under 40 pounds is use of a device with a full

harness, unless they are too tall."

72. On September 10, 2001, the National Child Passenger Safety Board, with the approval of NHTSA, publicly recommended that children should stay in a full harness seat until 40 pounds is reached. Evenflo representatives not only knew about this recommendation, they expressly approved it.

73. In December of 2001, a peer-reviewed journal article entitled "Seat Belt Syndrome In Children: A case report and review of the literature" appeared in Pediatric Emergency Care and affirmed that "children over 1 year of age and weighing 20 pounds should be restrained in a forward-facing child seat until they weigh 40 pounds." This was noted to be an "optimal restraint" recommendation.

74. In 2002, the AAP stated in its car seat guide entitled "Car Safety Seats: A Guide for Families, 2002" that children should stay in convertible seats until reaching "the top weight allowed." The AAP also stated that "children who weigh 40 pounds or less are best protected in a seat with a full harness;" that "children should remain in a convertible, forward facing or combination seat with a full harness until they reach the top weight or height allowed by the seat;" and that "children who weigh 40 lbs. or less are best protected in a seat with a full harness."

75. In March of 2002, the AAP issued a formal "Policy Statement" that was published in Pediatrics under the title "Selecting and Using the Most Appropriate Care Safety Seats for Growing Children – Guidelines for Counseling Parents" and which stated that a convertible or other forward facing seat should be used until the child outgrows it. "Children who weigh 40 lbs. or less are best protected in a seat with a full harness."

76. On August 27, 2002, Randy Kiser, Evenflo's Director of child safety seat

engineering, made a number of admissions at the *Steele v. Evenflo* trial in the capacity as Evenflo's corporate representative.

77. Randy Kiser admitted that "Information regarding the appropriate safe weight limit for the use of a child safety seat is important information" and "safety seat manufacturers have a responsibility to convey to people who purchase its seats the proper maximum and minimum weight limits for the safe use of the seat."

78. Randy Kiser admitted that "Irrespective of what the minimum limit is under (FMVSS) 213," the "safety seat manufacturer, who has more knowledge about his seat than anyone else, has an obligation to convey information about what the safe weight range is for use of the seat."

79. Randy Kiser admitted that "if a manufacturer knows of a safety hazard, a potentially serious crippling safety hazard with its product that it can't engineer out by changing the design," then "it has an obligation to warn consumers about that hazard."

80. Randy Kiser admitted that "in July of 1989, Evenflo's former director of product development, Jerome Koziatek, advised to raise the minimum weight limit on all of its booster seats from 30 to 40 pounds."

81. Randy Kiser admitted that Evenflo knew that its expert, Richard Stalnaker, says that "for children under 40 pounds, a five-point harness is the best seat."

82. On August 27, 2002, Evenflo's then retired Director of Technical Services testified under oath that "the literature has shown that the safest harness system is the so-called five point harness system."

83. On August 28, 2002, during the *Steele* trial, Evenflo's testifying expert witness, Dr.

Richard Stalnaker, testified that "I definitely agree that a five-point harness is best for a child under 40 pounds." This testimony was heard by Evenflo corporate representative Randy Kiser.

84. On August 28, 2002, Dr. Stalnaker agreed in sworn testimony during that *Steele* trial that "booster seats provide less protection than a full size child safety seat due to the lack of side wings and shoulder harnessers which protect the head and upper body." Again, Randy Kiser heard this testimony.

85. On August 30, 2002, the jury in the *Steele v. Evenflo* case rendered a verdict finding the Evenflo booster seat defective because it recommended booster use for children under 40 pounds. The verdict was for $8.5 million dollars. This verdict was later affirmed on appeal and the judgment was paid by Evenflo.

86. In December of 2002, CHOP issued "best practice" recommendations stating that "Forward facing seats should be used until your child reaches the maximum weight or height limit for the seat or until his ears reach the top of the child safety seat. When this happens, your child is ready for a belt-positioning booster seat."

87. In 2003, the AAP stated in its car seat guide entitled "Car Safety Seats: A Guide for Families, 2003" that children should stay in convertible seats until they reach "the top weight or height allowed." The AAP also stated that "Children who weigh 40 pounds or less are best protected in a seat with a full harness...Children should remain in a convertible, forward facing or combination seat with a full harness until they reach the top weight or height allowed by the seat." It further stated that "children who weigh 40 lbs. or less are best protected in a seat with a full harness."

88. In 2003, CHOP again defined "appropriate restraint" as "use forward facing child

safety seat until child has completely outgrown the manufacturer's maximum height and weight limits for the seat – usually 40-65 pounds."

89. In 2004, the AAP stated in its car seat guide entitled "Car Safety Seats: A Guide for Families, 2004 " that children should stay in convertible seats until they reach "the top weight or height allowed." The AAP also stated that "Children who weigh 40 pounds or less are best protected in a seat with a full harness" and "children should remain in a convertible, forward facing or combination seat with a full harness until they reach the top weight or height allowed by the seat." It further stated that "children who weigh 40 lbs. or less are best protected in a seat with a full harness."

90. In 2004, the University of Wisconsin published a peer-reviewed paper entitled "Improving Awareness and Use of Booster Seats in Head Start Families" that stated: "The literature and current best practice now emphasize the importance of using the full (harnessed) restraint as long as possible."

91. In March of 2004, the SAE published a paper documenting that the AAP and NHTSA both recommended that children "should be restrained in a forward-facing child seat until they weigh 40 pounds or the upper weight limit of their child restraint."

92. In December of 2004, a peer-reviewed article was published in Traffic Injury Protection documenting that, in side impacts, high back belt-positioning boosters like the Big Kid offered "poor torso containment and no head protection for children within the recommended age range."

93. In 2005, the AAP stated in its car seat guide entitled "Car Safety Seats: A Guide for Families, 2005" that children should "stay in a car safety seat with a harness for as long as possible

and then ride in a belt positioning booster seat."

94. In May of 2005, CHOP issued CPS Issue Report (#2) which contained "current research on safe seating for children" and recommended a forward facing seat with harness "until your child is too tall or heavy for the seat."

95. In September of 2005, CHOP published a scientific paper at the AAAM conference entitled "Effectiveness of High Back and Backless Belt-Positioning Booster Seats In Side Impact Crashes," in which the authors discussed sled testing that had "highlighted the potential for extreme occupant excursion out of the BPB in lateral crashes" when the "dummy's upper torso slipped out of the shoulder belt...resulting in large head excursions and the potential for head contact with vehicle interior."

96. In October of 2005, CHOP issued its Fact and Trend Report for 2005 in which it reported that head injuries were by far the most common in children involved in automobile accidents and that side impacts were the most often crash associated with injuries. "Optimal restraint" was defined and included the following: "Use a forward facing car seat until the child is too heavy or tall for the seat. Generally, this is when the child weighs 40 pounds."

97. In 2006, the AAP's internet car seat guide for 2006 stated that children should "stay in a car safety seat with a harness as long as possible before being allowed to ride in a booster seat."

98. In February of 2006, Evenflo recalled Big Kid belt-positioning boosters sold in Canada because they were labeled for children weighing less than 40 pounds; Evenflo wrote a letter to parents tell them of the risk if injury and death associated with under 40 pound use of the Big Kid.

99. In October of 2006, CHOP issued its Fact and Trend Report for 2006 in which it again reported that head injuries were by far the most common in children involved in automobile accidents and reaffirmed its recommendation – and that of the AAP – that "optimal restraint" was to "Use a forward facing car seat until the child is too heavy or tall for the seat. Generally, this is when the child weighs 40 pounds."

100. In 2007, the AAP's car seat guide for 2007 confirmed the AAP's position that children should "stay in a car safety seat with a harness as long as possible before switching to a booster seat."

101. In April of 2007, the National Child Passenger Safety Board published its Student Manual for CPS technicians, identifying the "child restraint manufacturers" as curriculum reviewers. The manual instructed that "children should ride in forward facing seats until they reach the upper weight or height limit" of their seats.

102. In November of 2007, William Van Arsdell, an "expert" utilized by Evenflo and virtually every other member of the child restraint industry to defend litigation involving defective child seats, testified that he kept his own daughter in a fully harnessed seat until she weighed 41 pounds.

103. In November of 2009, the *Robinson v. Evenflo* case was filed in North Carolina. The Robinsons alleged that their son, Ethan, suffered severe brain damage when his Big Kid failed to restrain him in a side impact crash because of its defective labeling and design.

104. In December of 2009, a paper was published entitled "In-Vehicle Crash Testing for the Development of a Child Side Impact Test Protocol." The paper documented that, in side impact crashes, "only the forward facing child seat with a 5 point harness was able to keep the

child dummy within the protective cocoon of the seat."

105. On April 27, 2010, the *Romph v. Evenflo* case was filed in Missouri. The Romph family alleged that their daughter Margaret was rendered a ventilator-dependent quadriplegic when her Evenflo booster seat failed to provide protection to her in a side-impact collision.

106. On March 21, 2011, the AAP published a peer-reviewed and eagerly awaited "Policy Statement on Child Passenger Safety." The Policy Statement documented "evidence based recommendations for best practices in the choice of a child restraint system to optimize safety in passenger vehicles for children from birth through adolescence." Specifically, the Policy Statement documented that:

a. "There is a safety advantage for young children to remain in CSSs with a harness for as long as possible before transitioning to booster seats."

b. "All children . . . should use a forward-facing CSS with a harness for as long as possible, up to the highest weight or height allowed by the manufacturer of their CSS."

107. On March 21, 2011, the AAP also published a peer-reviewed paper entitled "Technical Report Child Passenger Safety." It contained the same information as had been published earlier that day in the Policy Statement.

108. On March 21, 2011, the NHTSA released new child seat guidelines. With respect to booster seats, including the Big Kid, NHTSA stated that children should be kept "in a forward-facing car seat with a harness and tether until he or she reaches the top height or weight limit allowed" by the car seat's manufacturer. At that time, said NHTSA, "it's time to travel in a booster seat."

109. In April of 2012, Evenflo revised its Big Kid manual. Despite everything it knew

about this issue, it did not change the minimum weight of 30 pounds to 40 pounds. Not only did Evenflo leave the Big Kid's minimum weight at 30 pounds, it stated – in direct opposition to decades of scientific studies, recommendations and papers – that "even children who have not outgrown their toddler seat can benefit from the use of a booster seat, if it is used properly." This statement, coupled with the 30 pound minimum weight, was specifically intended by Evenflo as a marketing ploy to get parents of small children to move them out of five point seats and into the Big Kid, thereby generating huge sales revenues and profits for Evenflo that would not otherwise be earned.

110. Given the specificity, consistency and importance of the findings, recommendations, warnings and other information contained in the materials referenced above, various members of the child safety seat industry — including Graco, Cosco/Dorel, Britax and Jupiter Industries — all provided information to their consumers warning about the premature graduation of children weighing less than 40 pounds from safety seats with integrated restraints into belt-positioning boosters.

111. For example, Graco warned in its instructions for the "Car Seat/Booster Seat" in 2001 that "**if your child is between 30 and 40 lbs.**, he should continue to use the harness if his shoulders are below the upper harness slots. We highly recommend the use of built-in harness for as long as it is suitable and comfortable for your child." (Emphasis in original.)

112. Cosco/Dorel warned in its instructions for the Cosco High Back Booster in 2002 that the shoulder straps should not be removed from the seat for a child weighing between 30 and 40 pounds, converting it into a belt-positioning booster, until "**his shoulders are above the upper set of harness slots**." (Emphasis in original.)

113. Britax warned, for its Roadster belt-positioning booster seat, that no child should ever use the seat who weighed less than 40 pounds.

114. Evenflo chose not to offer any such warnings or recommendations with the United States version of the "Big Kid," preferring instead to broaden the recommended weight range to a minimum of 30 pounds for the sole purpose of trying to capture a larger share of the booster seat market and make more profit.

115. All of the information contained in the paragraphs above was actually known to Evenflo prior to the time that RJA's "Big Kid" was manufactured.

116. Evenflo knew, long before the subject Big Kid was designed, manufactured and sold, that mothers who purchase child safety seats did little on-line research prior to selecting a child seat, did little or no planning before buying a child seat, and have little real experience or knowledge about what child safety seat they should buy prior to entering a retail store.

117. Evenflo knew, long before the subject Big Kid was designed, manufactured and sold, that the environment where child safety seats are sold – typically 'big box' retailers – naturally forced a feature by feature comparision by mothers and that point of purchase information was of paramount importance and drove sales.

118. Evenflo knew, long before the subject Big Kid was designed, manufactured and sold, that weight requirements were one of the most important factor mothers considered when selecting a new child safety seat.

119. In the winter of 2013 when Evenflo sold the "Big Kid" to Plaintiffs, it failed to provide any of the information referenced above to the public or to the users and consumers of the "Big Kid" and failed to warn the public and the users and consumers of the safety seat about the

inherent dangers in using the seat with children under 40 pounds. Instead, it kept the minimum weight at 30 pounds, used the 30 pound minimum in its point of sale purchasing materials, and deliberately focused its marketing efforts at parents with children of that weight, knowing full well that the majority of purchasers would never find contrary recommendations in the medical literature or on the internet.

120. While Evenflo provided such information to Canadian citizens and advised Canadian consumers that the "Big Kid" had been specifically designed "ONLY" for use with children weighing 40 pounds and above, Evenflo expressly represented to U.S. consumers that the exact same seat had been designed "ONLY" for use with children weighing 30 pounds and above.

121. Evenflo failed to provide any of the information above to Plaintiffs in a proper, timely or adequate way at any time prior to or after the purchase of and use of the Big Kid in question and failed to warn or provide information to Plaintiffs of the dangers inherent in using the "Big Kid" with children under 40 pounds, particularly in lateral collisions. Had any of this information been provided, the Big Kid in question would not have been purchased and would never have been used with RJA.

122. All of the information contained in the paragraphs above was actually known to Evenflo prior to the time the Big Kid in question was purchased, prior to the time the Big Kid in question was used, and prior to the date of the collision on April 26, 2013.

123. Nevertheless, Evenflo failed to provide any of this information to Plaintiffs or any other member of the public.

124. Had this critical information been properly, timely and adequately provided, the Big Kid in question would not have been purchased, and it would not have been used with RJA.

125. Evenflo made affirmative representations, promises and warranties to Plaintiffs that the "Big Kid" was safe to use with children weighing as little as 30 pounds.

126. Prior to April 26, 2013, Evenflo sold the Big Kid in question to Plaintiffs who were induced to use it with RJA because of numerous express and implied promises, representations, assurances and/or affirmations that were given to them, including those set forth in the following paragraphs.

127. Plaintiffs believed that Evenflo was a trustworthy company with expertise in the design, labeling and use of child safety seats; that they could confide in and rely on this company when selecting and using a safety seat for RJA; that Evenflo's marketing promise that it only sold what was "Best for Baby" was truthful; and that if any information critical to the safe use of the product were known to Evenflo, it would be provided to them as consumers.

128. Plaintiffs believed the Big Kid in question was a safety seat and that it would provide safety to RJA in motor vehicle accidents.

129. Plaintiffs believed the Big Kid in question would provide effective restraint for RJA in foreseeable motor vehicle accidents.

130. Plaintiffs believed the Big Kid in question was suitable, safe and appropriate for children like RJA who weighed less than 40 pounds.

131. Plaintiffs believed that the Big Kid in question was fit for its intended purposes.

132. Plaintiffs believed that Evenflo knew or had reason to know of the particular purpose for which they intended to use the safety booster seat, and they relied on Evenflo's skill, expertise, testing, evaluation and judgment to select, advertise and furnish a safety booster seat that would be suitable for use by RJA, who weighed less than 40 pounds.

133. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew the "Big Kid" was not a safety seat and that to even imply that it was a "safety seat" was false, unfair, and a blatant misrepresentation that would seriously mislead consumers.

134. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew the "Big Kid" would not provide effective restraint for children weighing less than 40 pounds in automobile crashes, especially in lateral crashes.

135. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew a booster like the "Big Kid" was not suitable, safe or appropriate for children who weighed less than 40 pounds and, in fact, that it had such actual knowledge by April 1, 1989, at the latest.

136. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew it was selling the "Big Kid" in Canada labeled for use "ONLY" with children who weighed at least 40 pounds and that one of the reasons for that use restriction was the danger of inadequate upper torso and head restraint.

137. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew that the booster seats it sold in Canada contained labeling and instructions that Evenflo wrote and that specifically stated that the seat was designed "ONLY" for children weighing over 40 pounds and that if such booster seats were used for children who weighed less than 40 pounds, "you will increase your child's risk of injury or death" and that such use "creates a dangerous situation that is likely to result in serious injury or death for your child in the event of a crash or sudden stop."

138. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew since as early as 1989 that various governmental and non-governmental safety organizations in North America with significant expertise in child transportation safety issues recommended against

using a booster seat for a child who weighed less than 40 pounds, all as more fully set forth in the preceding paragraphs herein.

139. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew its booster seats had been implicated in numerous complaints and lawsuits where children had been seriously injured or killed because they had used the seat when they weighed less than 40 pounds or because the design of these seats allowed, caused and encouraged ejections and/or very serious injuries in certain types of foreseeable crashes, especially lateral crashes.

140. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew the "Big Kid" would not adequately protect a child who weighed less than 40 pounds during a collision and that it could actually enhance injuries to such children in that its design permitted and encouraged excessive upper torso movement and head excursion, head impact with the interior of the automobile, and partial ejection from the child from the seat.

141. Evenflo concealed and otherwise failed to disclose to Plaintiffs that it knew there were better and safer alternatives to booster seats for children weighing under 40 pounds, including forward facing seats with integrated harnesses.

142. At all times relevant, Plaintiffs did not have any knowledge, actual or constructive, of any of the above facts. At the same time, Evenflo knew or had reason to know that Plaintiffs and other similarly situated persons lacked such knowledge and that they could not realize the dangerous propensities of the "Big Kid," particularly in the face of attention grabbing point of purchase information that conveyed the message that the "Big Kid" provided safety and was unquestionably suitable for children who weighed as little as 30 pounds.

143. None of the information, statements or recommendations set forth above were on,

with or near the Big Kid in question at its point of sale.

144. On or about September 14, 1999, the Administrator of NHTSA, Ricardo Martinez, M.D. sent a letter to Evenflo which stated, among other things: As a key protective device for our Nation's children, child restraints must be designed and constructed with the highest levels of safety in mind.

145. Dr. Martinez stated: Our review of NHTSA's compliance test results during the past few years indicates that many restraints have been engineered to barely comply with some of the most safety-critical requirements of the standard, rather than being designed with larger compliance margins.

146. Dr. Martinez stated: With the safety of our Nation's children at issue, mere compliance with the minimum requirements of the standard is not enough; minimum standards should not be the most in safety design that manufacturers provide.

147. Dr. Martinez stated: When products are engineered with narrow compliance margins, the level of safety risk increases, even if the product is in technical compliance with the minimum standard.

148. Dr. Martinez stated: I am urging each manufacturer of child restraints to ensure that these restraints perform well beyond the minimum requirements of our standard. American families expect, and deserve, no less.

149. Dr. Martinez stated: It is up to the manufacturers of these critically important safety devices to take on the responsibility of maximizing child safety in all respects.

150. Evenflo received and read the letter from Ricardo Martinez, M.D. referred to in the preceding paragraphs.

151. Despite the passage of more than 13 years between the time Evenflo received and read the letter from Ricardo Martinez, M.D. referred to above (on or about September 14, 1999) and the collision involving RJA (April 26, 2013), Evenflo did nothing to change the design or labeling of the "Big Kid" to ensure that these restraints performed well beyond the minimum requirements of the standard, did nothing to ensure that the seat had been designed, labeled and constructed with the highest levels of safety in mind or to maximize child safety in all respects, and did nothing to pass on to consumers what it knew about the dangers of using a booster seat as a restraint for a child weighing less than 40 pounds. In fact, it actually did the opposite when it lowered the allowable weight range for boosters during that time, including the Big Kid, all so that it could increase its market share and its profits.

152. Between the time Evenflo obtained the knowledge set forth above and RJA's collision, Evenflo did nothing to change the design, testing, manufacturing, labeling or marketing of the "Big Kid" with respect to these safety issues.

153. At the time the "Big Kid" was originally designed, Evenflo had access to various test facilities that utilized a test "sled" to validate the design of the seat, its protective capabilities (or lack thereof), and to ensure that the purpose of the seat as expressly stated by Evenflo – "to restrain your child in a vehicle, to prevent him/her from striking the interior surfaces of the car in the event of sudden braking or a collision" – would be fulfilled.

154. Since the time the "Big Kid" was originally designed, Evenflo has been capable of using test sleds – including its own test sled – to analyze the dynamic crash performance of the booster seat at various crash angles, including angles typically associated with lateral crashes.

155. Between the time the "Big Kid" was originally designed and the date of RJA's

collision, Evenflo did not properly utilize test sleds or analyze such dynamic crash performance of the booster seat by using dummies weighing less than 40 pounds, despite the fact that Evenflo knew or should have known as an expert child restraint manufacturer that published scientific studies had disclosed numerous partial ejections from belt-positioning boosters in sled tests involving lateral forces.

156. On April 26, 2013, RJA who was then a minor, was incapable of contributory negligence.

157. On April 26, 2013, RJA was positioned in the Big Kid in question according to the instructions that were provided by Evenflo and was restrained by the Journey's lap/shoulder seat belt system.

158. The Big Kid in question failed to restrain and protect RJA in the collision and, as a direct and proximate result of defects in the "Big Kid" and the negligent acts and omissions of Evenflo, RJA's body was allowed excessive and injurious movement away from the Big Kid in question, resulting in catastrophic spinal injuries that have rendered her quadriplegic.

159. As a direct and proximate result of the injuries RJA sustained, she has been damaged in the past and in the future.

160. As a direct and proximate result of the injuries RJA sustained, her father, San Juan Arias, has incurred medical expenses for treatment and life care on behalf of his catastrophically injured daughter and will continue to be legally responsible for such necessary expenses until RJA reaches age of majority.

CAUSES OF ACTION

V.
STRICT LIABILITY - EVENFLO

Plaintiffs incorporate by this reference each and all of the allegations contained in Paragraphs 1 through 155 of this complaint as though fully set forth here.

161. Defendant Evenflo designed, manufactured, assembled, marketed, labeled and placed into the stream of commerce the Big Kid in question.

162. Evenflo had a duty to use reasonable care in the manufacture, construction, design, formulation, preparation, processing, assembly, testing, evaluation, certification, warnings, instructions, marketing, selling, advertising, packaging and labeling of the Big Kid so as not to subject the user to injury because of a defect.

163. Evenflo had a duty to provide some or all of the information contained in paragraphs 9 through 155 to Plaintiffs, both before and after purchase of the Big Kid in question.

164. Evenflo held itself out as an expert in the child safety seat business and, as such, had a non-delegable duty to provide all material information that it knew or had reason to know about the Big Kid, and boosters generally, to Plaintiffs and other similarly situated persons both before and after the Big Kid in question was purchased.

165. Evenflo breached such duties as the Big Kid in question was in a defective condition at the time it left the control of Evenflo.

166. The Big Kid in question was defective because the booster safety seat did not adequately protect a child during a lateral collision, including the failure of the seat to provide proper upper torso and head restraint.

167. The Big Kid in question was defective because it enhanced injuries to children in that its design permitted and encouraged excessive upper torso movement and head excursion, impact with the interior of the automobile, and complete or partial ejection of the child from the

seat.

168. The Big Kid in question was defective because its accompanying packaging, literature, labels, point of sale advertising materials, promises, warranties and representations failed to warn or give adequate warnings, instructions or information to Plaintiffs and other consumers or users of the defective and unreasonably dangerous nature of the safety seat and/or any of the information contained in paragraphs 9 through 155 above.

169. Evenflo knew or should have known of the unreasonably dangerous and defective conditions in the Big Kid at the time the product left its control.

170. There were safer alternative designs that would have prevented these defects and inadequacies and that would have either prevented or significantly reduced the risk of injury without substantially impairing the Big Kid's utility.

171. Furthermore, the safer alternative designs were economically and technologically feasible at the time the Big Kid in question left the control of Evenflo by the application of existing or reasonably achievable scientific knowledge.

172. Evenflo failed to adopt a safer alternative design that could have been adopted without substantial impairment of the product; in fact, Evenflo had been building and selling safety seats with safer alternative designs for many years prior to the collision.

173. Further, Evenflo could have provided consumers with some or all of the information set forth in paragraphs 9 through 155 above; providing such information would not have impaired in any way the alleged utility of the Big Kid.

174. The Big Kid as sold to Plaintiffs violated FMVSS 213.

175. Defendant Evenflo is strictly liable to Plaintiffs under Sections 402A and 402B of

the RESTATEMENT OF TORTS 2D and applicable products liability law without regard to or proof of negligence or gross negligence, although Plaintiffs would also show that the Big Kid in question was negligently designed, manufactured, assembled, labeled, marketed and sold in a defective condition and that such negligence proximately caused Plaintiffs' injuries and damages.

176. The unreasonably dangerous nature of the defects in the Big Kid in question creates a high probability that when there is a crash, a child – especially one weighing less than 40 pounds who is involved in a lateral impact – positioned in the Big Kid will sustain severe, catastrophic or fatal injuries.

177. Evenflo knew or should have known of the risks of serious injury or death to foreseeable users or consumers after the Big Kid left its control and failed to instruct, warn or take other action to prevent such risks.

178. Defendant Evenflo knew of this probability prior to production and marketing of the Big Kid and, in conscious disregard of the consequences, willfully and wantonly manufactured, marketed and sold the Big Kid with its defects which caused the injuries to RJA and Plaintiffs' damages as more specifically described herein.

179. The design, labeling and marketing materials associated with the Big Kid are so unreasonable that a reasonable person who is aware of the relevant facts would not use the product.

180. In the exercise of reasonable care, Evenflo knew or had reason to foresee that some injury would result from its acts and omissions regarding the Big Kid.

181. The Big Kid's defects enhanced and increased the risk of injury and/or death to any occupant in the booster seat during a collision, including RJA.

182. The defects were a proximate and producing cause of the injuries to RJA.

183. Absent the defects in the Big Kid in question, RJA would not have received permanent or disabling injuries in the collision.

184. The Big Kid in question was expected to reach the ultimate consumer and did reach the ultimate consumer without substantial change or alteration in the condition in which it was designed, manufactured, labeled, advertised, marketed, tested, distributed and sold, as being used by RJA on April 26, 2013, in a manner reasonably anticipated and foreseen by Evenflo, and was in the same condition as when it left the control of the defendants.

VI.
NEGLIGENCE - EVENFLO

Plaintiffs incorporate by this reference each and all of the allegations contained in Paragraphs 1 through 184 of this complaint as though fully set forth here.

185. Plaintiffs' injuries and damages were proximately caused by the negligence of Defendant Evenflo in designing, manufacturing, assembling, testing, labeling, marketing, warning, instructing and selling the Big Kid that does not provide adequate restraint to and actually causes and enhances excessive upper torso movement, excessive head movement and partial ejections, particularly with children who weigh less than 40 pounds.

186. Evenflo was negligent in failing to provide reasonable and adequate warnings to consumers and users of the Big Kid about its unreasonably dangerous conditions, lack of effective restraint benefits for the upper torso and head, and propensity to cause or enhance injurious upper body movement of the children using it, especially those weighing less than 40 pounds.

187. Evenflo was negligent in marketing the Big Kid in such a way as to mislead consumers as to it safety, suitability and effectiveness.

188. Evenflo was negligent in improperly and inadequately testing or failing to test the

Big Kid in order to analyze its performance in crashes, including lateral collisions, when occupied by children weighing less than 40 pounds.

189. Defendant Evenflo's negligence was a proximate and producing cause of the injuries and damages complained of herein.

VII.
GROSS NEGLIGENCE AND MALICE - EVENFLO

Plaintiffs incorporate by this reference each and all of the allegations contained in Paragraphs 1 through 189 of this complaint as though fully set forth here.

190. At all times relevant, Evenflo and its officers, directors and managers had actual knowledge that its booster safety seats were not preventing or minimizing injuries to children in automobile accidents involving lateral forces and that they were, in fact, enhancing and causing injuries, particularly with children who weighed less than 40 pounds.

191. At all times relevant, Evenflo and its officers, directors and managers had actual knowledge that its booster safety seats were, especially in automobile accidents involving lateral forces, allowing, enhancing and causing excessive upper torso movement, excessive head movement, and partial ejections, particularly with children who weigh less than 40 pounds.

192. At all relevant times, Evenflo and its officers, directors and managers had actual knowledge that its booster safety seats should not be used with children who weigh less than 40 pounds and that, for such children, convertible safety seats provided significantly more protection in collisions, especially lateral collisions.

193. Despite its knowledge as set forth herein, Evenflo and its officers, directors and managers made a conscious and deliberate business decision to market and sell the Big Kid to American consumers by telling them, among other things, that the seat was suitable and safe for

children weighing less than 40 pounds and that the seat had, in fact, been specially designed for children who weighed as little as 30 pounds.

194. At the same time, Evenflo knew that, as early as 1991, it had already recognized that a minimum weight for boosters should be 40 pounds and that children should remain in child safety seats with harnesses, preferably 5-point harnesses, until they reached 40 pounds.

195. Moreover, Evenflo expressly told Canadian consumers that the exact same booster seat used by RJA in the collision was UNSAFE and UNSUITABLE for children who weighed less than 40 pounds and that if a child under 40 pounds used the seat, he or she could be killed or seriously injured in a collision.

196. The ONLY reason Evenflo changed its minimum weight from 40 to 30 pounds for those booster seats it chose to sell in the United States, including the Big Kid, was so that it could increase its market share, sell more seats and make more profit – especially when combined with a marketing plan that deliberately and intentionally concealed safety information that any reasonable consumer would find material, information that many of Evenflo's competitors disclosed to consumers.

197. Evenflo's marketing strategy worked, and hundreds of thousands of Big Kid booster seats have been sold for children weighing between 30 and 40 pounds, resulting in net profits to Evenflo in the millions of dollars.

198. Evenflo's actual knowledge as set forth above regarding the defective and unreasonably dangerous nature of its booster safety seats, including the Big Kid, its calculated and deliberate failure to utilize its knowledge to eliminate those defects and/or to fully and completely warn or inform persons who were about to purchase or who had already purchased the seats, and

its deliberate marketing scheme that was devised to take advantage of and dupe American consumers, together or singly, evidences a conscious disregard of and indifference to the rights, safety or welfare of the children who used Evenflo's Big Kid safety seats, including RJA.

199. Plaintiffs allege that the conduct of Evenflo in designing, labeling, advertising, marketing, manufacturing and/or selling the Big Kid in a defective condition was undertaken willfully and wantonly and with conscious disregard for the consequences, thus constituting grounds for punitive damages for gross negligence and malice.

200. In light of the above, and other misconduct, Plaintiffs request exemplary or punitive damages in an amount sufficient to punish Defendant Evenflo consistent with its net worth and in an amount that a finder of fact, in its discretion, awards in excess of minimal jurisdictional limits of the Court and not to exceed ten times the actual damages as set forth herein.

VIII.
BREACH OF EXPRESS AND IMPLIED WARRANTY - EVENFLO

Plaintiffs incorporate by this reference each and all of the allegations contained in Paragraphs 1 through 200 of this complaint as though fully set forth here.

201. Defendant Evenflo, by and through the sale of the Big Kid in question, expressly and impliedly warranted to the public generally, and to Plaintiffs specifically, that the Big Kid was fit for the purpose for which it was were intended.

202. Plaintiffs made use of the product as alleged herein, and relied on the express and implied warranties.

203. Contrary thereto, the Big Kid was not fit for its intended use, rendering the product in question unreasonably dangerous.

204. Defendant Evenflo breached the express and implied warranties by the failure of

the Big Kid as set forth herein and the improper marketing with regard to failure to warn and failure to instruct regarding the nature of the product and how and by whom it could be safely used, subject to the known dangerous defects by Evenflo as set forth herein.

205. The Big Kid in question that caused injury to RJA was defective and unreasonably dangerous at the time it left Evenflo's control and, as a consequence, Evenflo has breached the implied warranty of merchantability as set forth in § 2.314 of the Tex. Bus. & Com. Code in that the Big Kid in question was unfit for its ordinary and intended purpose.

206. Evenflo's breach of warranties and the defects set forth herein rendered the Big Kid product unreasonably dangerous and was a proximate cause and a producing cause of Plaintiffs' injuries and damages.

207. Further, Evenflo's conduct was done knowingly.

IX.
DAMAGES

Plaintiffs incorporate by this reference each and all of the allegations contained in Paragraphs 1 through 207 of this complaint as though fully set forth here.

208. As a result of the actions and conduct of the Defendants set forth above, RJA was catastrophically injured in the collision and is now quadriplegic.

209. Because of the nature and severity of the injuries sustained, RJA has suffered physical pain and mental anguish and, in reasonable probability, will continue to suffer physical pain and mental anguish in the future and for the remainder of her life.

210. RJA has suffered and will continue to suffer disfigurement, physical impairment, limitation of activities and loss of life's enjoyment.

211. Because of the nature and severity of the injuries sustained, RJA has required

medical treatment in the past and in reasonable probability will require other and additional treatment as well as life care equipment and services in the future and for the remainder of her life.

212. Charges for necessary medical treatment and services RJA has received in the past and charges for treatment and services that will in reasonable probability be necessary in the future and for the remainder of RJA's life have been and will be reasonable charges made necessary by the collision.

213. As a direct and proximate result of the injuries RJA has suffered, minor Plaintiff has diminished earning capacity in the future. To compensate for this loss, minor Plaintiff seeks recovery of loss of her future earning capacity.

214. Because RJA is a minor, Plaintiff San Juan Arias, as her father, has incurred expenses and/or liability for expenses associated with the treatment of her injuries and for her daily care.

215. Plaintiff San Juan Arias therefore seeks, in his individual capacity, recovery of such expenses in the past and for future medical care and accompanying expenses the minor requires until RJA reaches the age of majority.

216. Plaintiffs also seek exemplary/punitive damages as a result of the gross negligence of Defendants as described and pled above.

X.
PRE-JUDGMENT INTEREST

Plaintiffs incorporate by this reference each and all of the allegations contained in Paragraphs 1 through 216 of this complaint as though fully set forth here.

217. Plaintiffs would additionally say and show that they are entitled to recover pre-judgment interest and attorney's fees in accordance with law and equity as part of their

damages herein, and Plaintiffs here and now sue for recovery of pre-judgment interest and attorney's fees as provided by law and equity under the applicable provisions of the laws of the State of Texas.

XI.
JURY DEMAND

218. Plaintiffs respectfully request a jury trial.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that Defendant be cited to appear and answer herein, and that upon final trial, Plaintiffs recover actual and compensatory damages, as specified above, from the Defendant; that they recover exemplary damages; that they recover their costs of Court herein expended; that they recover the interest, both pre-judgment and post-judgment, to which they are entitled under the law; and for such other and further relief, both general and special, legal and equitable, to which they may be justly entitled.

Respectfully submitted,

By: ______________________

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